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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of----- )  
 )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 05-0002  
 )  
Instituting a Proceeding to )  
Investigate the Issues and )  
Requirements Raised by, and )  
and Contained in, Hawaii Revised )  
Statutes 486H, as Amended. )  
\_\_\_\_\_ )

DECISION AND ORDER NO. 22547

Filed June 21, 2006  
At 12 o'clock P.M.

Karen Higashida  
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of-----	)	
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PUBLIC UTILITIES COMMISSION	)	Docket No. 05-0002
	)	
Instituting a Proceeding to	)	Decision and Order No. 22547
Investigate the Issues and	)	
Requirements Raised by, and	)	
and Contained in, Hawaii Revised	)	
Statutes 486H, as Amended.	)	
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DECISION AND ORDER

By this Decision and Order, the commission terminates this investigation and closes this docket, given Act 78, Session Laws of Hawaii (2006), which indefinitely suspends the commission's duty to calculate and publish the maximum pre-tax wholesale price of gasoline ("Gas Price Caps").

I.

Background

By Order No. 21525, filed on January 4, 2005, the commission initiated an investigation in this docket pursuant to Hawaii Revised Statutes ("HRS") Chapter 486H and Hawaii Administrative Rules ("HAR") § 6-61-71, "to examine the issues and requirements raised by, and contained in," HRS Chapter 486H (2004).<sup>1</sup>

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<sup>1</sup>See Order No. 21525, filed January 4, 2005, at 1. The procedural background of this docket was extensively laid out in Decision and Order Nos. 21952 (filed August 1, 2005) and 22451 (filed May 3, 2006) and is hereby incorporated by reference. Chevron U.S.A. Inc. ("Chevron"), Tesoro Hawaii Corporation ("Tesoro"), Shell Oil Company ("Shell"), members of the Hawaii



on zone price adjustments.  
HRS § 486H-13(h) [(2004)].

7. Analyzing zone price adjustments to the maximum pre-tax wholesale regular unleaded, mid-grade, and premium gasoline prices and examining the effect, impact, and appropriateness on a zone by zone basis. HRS § 486H-13(i) [(2004)].
8. Determining the types of documents, data, and information necessary for the commission to determine whether the manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted, pursuant to HRS Chapter 486H. HRS § 486H(j) [(2004)].
9. Identifying any further adjustments necessary to establish [Gas Price Caps] that reflect and correlate with competitive market conditions. HRS § 486H-16(c) [(2004)].<sup>2</sup>

In Decision and Order No. 21952, the commission set forth:

- (1) the Gas Price Caps for non-ethanol conventional gasoline;
- (2) the procedures for filing petitions and complaints with the commission;
- (3) the procedures for publishing the Gas Price Caps; and
- (4) the risks identified in implementing HRS Chapter 486H.<sup>3</sup>

The commission concluded that the following factors should be used in determining the conventional (non-ethanol) Gas Price Caps:

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<sup>2</sup>See id. at 2-4.

<sup>3</sup>See Decision and Order No. 21952, filed Aug. 1, 2005, at 1-2.

- (a) the HRS Chapter 486H baseline price and location adjustment factor established by the Legislature;
- (b) the HRS Chapter 486H marketing margin factor established by the Legislature;
- (c) the HRS Chapter 486H Premium and Mid-grade adjustments established by the Legislature; and
- (d) the zone price adjustments recommended by ICF, except that the highest actual transportation costs would be used rather than the average transportation costs proposed by ICF.<sup>4</sup>

In Decision and Order No. 21952, the commission stated that it would establish the subsequent schedules and procedures in Docket No. 05-0002, including, but not limited to, "adjusting the maximum pre-tax wholesale price formula or factors to include ethanol."<sup>5</sup>

In Decision and Order No. 22451, the commission exercised its discretion under HRS Chapter 486H to modify the Gas Price Caps to reflect the requirements of HRS § 486J-10 and HAR § 15-35-3 (2004) (the "Ethanol Mandate").<sup>6</sup> The commission issued Decision and Order No. 22451 to set forth:

- (1) the maximum pre-tax wholesale price of E-10 gasoline ("E-10 Gas Price Caps"),
- (2) the commission's publication procedures for the E-10 Gas Price Caps; and

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<sup>4</sup>See id. at 2. ICF refers to ICF Consulting, LLC, who was retained by the commission to review and evaluate the issues and requirements raised by, and contained in, HRS Chapter 486H, as amended.

<sup>5</sup>See id. at 40.

<sup>6</sup>See Decision and Order No. 22451, filed May 3, 2006, at 1.



Hawaii Gas Cap Law. At such time, the commission will make the necessary adjustments, including but not limited to issuing another Order or Decision and Order.<sup>9</sup>

The commission also stated that it would address any adjustment to the mid-grade and premium adjustment factors as raised by HPMA's members in their Motion for Adjustment of the Premium and Mid-Grade Adjustment Factors, filed on March 22, 2006 ("HMPA's Motion"), in a separate decision and order.

## II.

### Discussion

As a general rule, the commission will not expend resources on statutory duties that have been legislatively suspended. On May 5, 2006, HB 3115 was signed into law by Governor Lingle and became Act 78. Act 78 amends or repeals various sections of HRS Chapters 486J and 486H by, inter alia:

- (1) providing increased industry transparency;
- (2) indefinitely suspending the Gas Price Caps and the commission's duty to calculate the Gas Price Caps;
- (3) giving the governor the authority to reinstate the Gas Price Caps upon publication of a finding that its reinstatement is beneficial to the economic well-being, health, and safety of the people of the State;
- (4) revising the formula for calculating the Gas Price Caps if reinstated by the governor, by, inter alia,
  - (a) altering the baseline calculation;
  - (b) eliminating the location adjustment factor;
  - (c) reducing the marketing margin factor; and
  - (d) allocating

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<sup>9</sup>See id. at 2 n.2.








DONE at Honolulu, Hawaii JUN 21 2006.

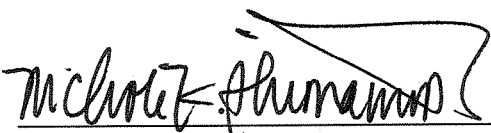
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Nichole K. Shimamoto  
Commission Counsel

05-0002.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22547 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Certificate of Service  
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DATED: JUN 21 2006